



CANNON BUILDING
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STATE OF DELAWARE
BOARD OF FUNERAL SERVICES

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PUBLIC MEETING MINUTES:	BOARD OF FUNERAL SERVICES
MEETING DATE AND TIME:	Tuesday, March 25, 2014, 10:00 a.m.
PLACE:	861 Silver Lake Boulevard, Dover, Delaware Conference Room B , second floor of the Cannon Building
MINUTES APPROVED:	May 27, 2014

MEETING MINUTES

MEMBERS PRESENT

S. Keith Parsell, Professional Member
Duwayne Casini, Professional Member
Bill Torbert, Professional Member
Danna Levy, Public Member
Mary Byrd, Public Member

MEMBERS ABSENT

Chad Chandler, Professional Member, President
Marceline Knox, Public Member

DIVISION STAFF/DEPUTY ATTORNEY GENERAL

Kevin Maloney, Deputy Attorney General
Sheryl Paquette, Administrative Specialist III

OTHERS PRESENT

Gayle MacAfee, Deputy Director, Professional Regulation
Jeff Ford, Investigative Supervisor, Professional Regulation
Bennie Smith, Smith Funeral Home

CALL TO ORDER

Mr. Parsell chaired the meeting. He called the meeting to order at 10:02 a.m.

REVIEW AND APPROVAL OF MINUTES

The Board reviewed the minutes of the February 25, 2014 meeting. Mr. Maloney suggested a minor change to the minutes and the Board approved. Mr. Parsell made a motion, seconded by Mr. Casini, to approve the minutes as corrected. The motion carried unanimously.

UNFINISHED BUSINESS

Bennie Smith – Compliance Issue

Mr. Smith apologized for missing the last meeting and said he got the date wrong. He said he created a new employee handbook, as well as the 'Professional Conduct Code' for his staff. He explained he went over these with his staff during the past month and handed copies of them to the Board for review. Mr. Parsell asked how many staff were involved in the meeting and Mr. Smith said 'seven'. Mr. Smith said there was a fire at his Millsboro location and asked the Board for permission to use a temporary location for his funeral service arrangements. He said it would take about nine months to rebuild. The Board granted permission for Mr. Smith to use the temporary location for his arrangements.

Ms. Gayle MacAfee introduced herself to the Board. She stated she had met Ms. Byrd and Mr. Parsell at the Sunset Hearings recently at Legislative Hall. She explained she replaced Ms. Kay Warren as Deputy Director for the Division and has worked for the Division of Professional Regulation for 26 years; with the past 11 years with the Board of Medical Licensure and Discipline. She noted she was the Board Liaison for the Funeral Board back in 1988.

Elimination of Embalming Room Requirement for Firms with Multiple Locations

Mr. Parsell handed out a draft of proposed changes to the Embalming Room Requirement for review. He explained Funeral establishments with multiple locations in Delaware only need an embalming area in one of their establishments. A question was raised about multiple trade names. Mr. Maloney asked the Board if they wanted to recommend one embalming area per one funeral home owner; or should each establishment have their own embalming area in the event an owner owns several funeral homes. Mr. Parsell said if an owner of a Funeral Home has several establishments, they would only be required to have one embalming area in one of those establishments. He said the establishments needed to be located in Delaware. Mr. Casini said the language should include "only in Delaware." Mr. Maloney suggested adding, "or owned by several owners." Mr. Parsell said the 'owner' of the establishment may not make all the decisions. That person may be the supervisor or Funeral Director of the establishment. After much discussion, the Board suggested the following wording for the statutory change:

Funeral establishments with multiple branch locations, operated under the same trade name and/or owned by the same owners within the State of Delaware are required to maintain areas for embalming in at least one of those Delaware locations and said the preparation area must be so disclosed on the appropriate establishment license.

Mr. Maloney said this would require a statutory change and the Board should suggest this during Sunset review. He said he would formalize this for review at the next Board meeting. Ms. MacAfee said any proposed legislation from the Board could go on the next legislative agenda.

Consideration of How the FTC Rule Should Affect Cemeteries in the State With Regard to Trusting

Mr. Parsell said the Federal Trade Commission is working on bringing 3rd parties and cemeteries under their Rules and Regulations with regard to 'trusting'. He read Title 5, Section 34, *Del. C. § 3402* to the Board, which basically stated that cemeteries that trust money for the sale of goods and services, are covered under the Banking Commissioners Rules and Regulations. He said if someone brings a complaint before the Board with regard to pre-need funds, and a 3rd party is involved such as a 'cemetery', the Board would have no jurisdiction over the complaint. Mr. Parsell asked Mr. Maloney what the Board would do in this instance, and Mr. Maloney said they would have to turn the complaint over to the Bank Commissioners office as it would be covered under their statute. Mr. Maloney said he believes it would only pertain to trust funds; not to lots and/or mausoleum sales.

Validity of Burial Permits Being Issued and Transfer of Decedents Out of the State Prior to Attending Doctor Signing Death Certificates

Mr. Parsell asked the Board how they would like to handle this issue. Mr. Torbert read Title 24, Chapter 31, *Del. C. § 3122* to the Board, which is already written into the law. He said he felt this statement should extend to "before a certified physician has either agreed to, or signed, a death certificate." He asked how a person would know it wasn't referred to the Medical Examiner until a doctor has done that. Ms. Byrd said she thought a doctor had to sign the death certificate before anything could be done. Mr. Torbert stated a pronouncing

physician or nurse does that, then the Funeral Director is called with the understanding that the certifying physician that knows the history of the patient will sign the certificate within 72 hours by state law. Mr. Maloney went over Title 16, Chapter 31, *Del. C. § 3123* and said it gives the rules and timing for signing the death certificate. Mr. Parsell said Funeral Directors are aware of the 72-hour rule; however, the concern is whether or not a Funeral Director can let a body depart the state before a physician has signed the Death Certificate? Board members discussed other issues with regard to signing the death certificate.

- Temporary Burial Permits – This still doesn't show that the death certificate has been signed. What about liability for the Funeral Director if the body leaves the state?
- Tourist activity – Doctors and Medical Examiners don't want to sign in some of these cases. Funeral Directors spend hours hunting down physicians willing to sign.
- Physician on vacation and 'on-call' physician won't sign due to liability.

These are just a few of the issues facing Funeral Directors. Mr. Parsell discussed the temporary burial permit.

After much discussion, the Board tabled this for further review at a later meeting. In the meantime, Board members will seek advice from different associations; such as funeral firms that transport bodies, funeral homes, Delmarva Funeral Service Association, and the Delaware State Funeral Directors Association, regarding their opinion on this matter. Ms. Byrd suggested contacting the Medical Society and Mr. Torbert suggested the Office of the Chief Medical Examiner as well.

Discussion of the 24-Hour Embalming Rule as Written

Mr. Maloney read Title 16, Chapter 31, *Del. C. § 1953*, Section 3 from the Delaware State Board of Health's regulations which states:

Except as hereinafter provided, all human bodies dead within the State of Delaware shall be cremated or buried; or placed within a receiving vault within five (5) days after death. Any dead human body to be kept longer than twenty-four (24) hours shall be embalmed or placed in a hermetically sealed casket which will not be opened at any time after this twenty-four (24) hour period, except when medical or legal investigation necessitates a longer period. The State Board of Health shall issue a special permit in such cases. Application for such a permit shall be made to the State Registrar of Vital Statistics, Dover. Bodies to be kept more than twenty-four (24) hours under this exception must be stored in suitable, approved refrigeration facilities.

The Board discussed the 24-hour rule, when the 24-hour rule actually starts, whether or not there is an exception for refrigeration, how long the timeframe might be for an exception, viewing for identification purposes, and religious beliefs. After much discussion, the Board agreed this issue needed clarification so they tabled the discussion for further review at a later meeting.

NEW BUSINESS

RATIFICATION OF LICENSURE

Megan Graham, Funeral Resident Intern

Mr. Casini made a motion, seconded by Ms. Levy, to ratify the above listed license. The motion carried unanimously.

REVIEW OF RESIDENT INTERN REPORTS

Joshua Schoenberg (1st and 2nd quarterly reports)

Mr. Casini reviewed the report and made a motion, seconded by Ms. Byrd, to approve the reports as presented. The motion carried unanimously.

REVIEW OF APPLICATIONS FOR LICENSURE

None

REVIEW OF APPLICATIONS FOR CONTINUING EDUCATION APPROVAL

National Funeral Directors and Morticians – Annual House of Representatives Meeting (4/26/14 – 4/30/14)

Let's Get Lifted: A Civil Rights Experience, April 26, 2014, Requesting 2 CEUs

Creativity in Business, April 27, 2014, Requesting 1 CEU

Where Are We Going, April 27, 2014 Requesting 1 CEU

OSHA and FTC: Get The Facts, April 28, 2014, Requesting 2 CEUs

What Would You Do? An Embalming Symposium, April 29, 2014 Requesting 2 CEUs

Mr. Casini reviewed the applications for continuing education and made a motion, seconded by Ms. Byrd to approve them as submitted. The motion carried unanimously.

COMPLAINT UPDATES AND CONSENT AGREEMENTS

COMPLAINT UPDATES

Forwarded to Attorney General

#27-01-13

Mr. Casini asked if this was the only pending complaint the Board has currently and Mr. Ford said it was not. Mr. Torbert said the complaints are assigned to Board members and only the assigned Board member is aware of the complaint. Complaints are not discussed among Board members.

HEARING OFFICER RECOMMENDATIONS

Mr. Maloney said he is drafting a Final Order for Ms. Harris-Nock and will request approval of the Board President's signature when completed.

CONSENT AGREEMENTS

None

CORRESPONDENCE

None

JOINT SUNSET REVIEW PROCESS

Mr. Parsell briefed the Board on the March 5th meeting at Legislative Hall that he attended with Ms. Byrd and Mr. Maloney. He said both he and Ms. Byrd discussed issues relevant to the Board and answered all questions that were asked. Mr. Parsell said he felt the whole process was well received. Ms. Byrd said she questioned the current complaint process. She said she feels the problem is that the Board can't be privy to complaint data as Board members may have to sit on hearings in the future. Mr. Maloney said he pointed out to the legislature that complaints are not public records. He said he explained to them that complaints come in as an unsubstantiated allegation, then the Investigative process determines whether or not it becomes a complaint.

Mr. Parsell discussed CE requirements with the Board. He said good things have been happening in Delaware in state association meetings. He said sometimes meetings are a couple hours, and have even had speakers at the meetings. He asked the Board if attendees at these types of meetings can earn .5 CEUs for their participation. Mr. Maloney said the Board can make a change to their CE requirement through the regulatory process. Mr. Torbert said he believes the Delaware Association can earn .5 CEUs for a meeting. Mr. Casini said he thought CEUs could be earned when a speaker is at a meeting. Mr. Maloney said the association holding the meeting can apply to the Board for approval of CEUs.

OTHER BUSINESS BEFORE THE BOARD (for discussion only)

None

PUBLIC COMMENT

Mr. Jeff Ford, Investigative Supervisor for the Division of Professional Regulation, discussed the complaint process with the Board. Since questions about the complaint process came up at the legislative meeting, he thought it would be helpful. Mr. Ford brought complaint statistics from 2010 until present. Without discussing specifics about the complaints, Mr. Ford gave statistical data, such as the amount of complaints processed, how many were accepted and rejected, and how many have been closed or are still open as of this date. He

explained the general types of complaints the Board receives and said the majority of cases he receives involve billing issues. The Board thanked him for explaining the process in detail.

NEXT MEETING

The next Board meeting will be held on Tuesday, May 27, 2014, at 10:00 a.m. in Conference Room B located on the second floor of the Cannon Building at 861 Silver Lake Boulevard, Dover, Delaware.

ADJOURNMENT

There being no further business, Mr. Casini made a motion, seconded by Mr. Levy, to adjourn the meeting at 12:04 p.m. The motion to adjourn carried unanimously.

Respectfully submitted,

A handwritten signature in cursive script, reading "Sheryl Paquette".

Sheryl Paquette
Administrative Specialist III

The notes of this meeting are not intended to be a verbatim record of the topics that were presented or discussed. They are for the use of the Board members and the public in supplementing their personal notes and recall for presentations.